

**Title:** Violations and Sanctions

**Purpose**

Program requirements serve to guide participants, local agencies and program staff in administration and participation in the WIC Program as directed by federal guidelines. Violations and sanctions exist to ensure program integrity.

**Authority** 7CFR 246.12

**Policy**

The Montana WIC Program shall determine the type and level of sanction to be applied against retailers based upon the severity, nature and pattern of the WIC Program violation.

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**I. Notification of Violation**

- A. If the Montana WIC Program finds that a retailer has committed a violation that requires a pattern of occurrences in order to impose a sanction, the Montana WIC Program will notify the retailer of the initial violation in writing prior to documentation of another violation, unless the Montana WIC Program determines that notifying the retailer would compromise an investigation. The Montana WIC Program will document in the retailer file the reason why the notification would compromise the investigation.
- B. The Montana WIC Program may conduct another compliance buy visit 30 days after the retailer receives notification of a violation.
- C. Notification is not required;
  - 1. for WIC retailer disqualifications or civil money penalties based on Supplemental Nutrition Assistance Program (SNAP) sanctions
  - 2. for violations that only require one incidence before a sanction is imposed
  - 3. if such notice could compromise covert investigations being conducted by the Supplemental Nutrition Assistance Program (SNAP), the USDA Office of the Inspector General, the State Police, or other authorities

**II. Establishing a Pattern of Violations**

- A. Mandatory Federal Disqualifications: Those Mandatory Federal Sanctions identified as requiring a pattern are assigned a disqualification based on at least two (2) independent documented repeated violations during any investigation.
- B. Montana WIC Program Sanctions: Montana WIC Program sanctions require documentation of a pattern of the same violation. A pattern of violations can be based on at least two (2) independent documented violations during any compliance investigation, or at least three (3) documented independent violations obtained through objective data or other non-compliance purchase investigations.
  - 1. When conducting inventory audits, a pattern can be established during a single review of the retailer's redemption records and depends on the magnitude of

shortfalls and the period of time over which they occur. A pattern of violations does not need to be present when applying a permanent disqualification as outlined.

2. When more than one violation is detected during a single investigation, the disqualification period will be based on the most serious violation.
3. The Montana WIC Program may not accept voluntary withdrawal of a retailer from the WIC Program as an alternative to disqualification.
4. Any retailer who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds will be subject to a fine of not more than \$25,000 (Public Law 105-336) or imprisonment for not more than five (5) years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one (1) year or both. (7 CFR §246.12 (h) (3) (xx))

### **III. Retailer Noncompliance**

- A. Montana WIC may initiate administrative action to disqualify or assess a fine against a Retailer for non-compliance on the basis of one incidence of a violation or a pattern of violations. An incidence is defined as one isolated event in a single point in time or any single occurrence of a violation. A pattern is defined as two or more incidences of a violation.
- B. Mandatory sanctions are federal penalties and shall constitute grounds for disqualification from the WIC Program for a minimum of one (1) year and up to permanent disqualification.
- C. State sanctions are penalties that shall constitute grounds for disqualification from the WIC Program and may include fines, mandated training, and/or the submission of a corrective action plan.
- D. State sanctions will not be added to a federal mandatory sanction within the same investigation unless a mandatory sanction from the same investigation is not upheld on appeal.

### **V. Mandatory Violations and Sanctions**

Class A and B violations are subject to mandatory federal sanctions and shall constitute grounds for disqualification from the WIC Program for a minimum of one (1) year and up to permanent disqualification.

#### **A. Class A Violations**

These violations require one incidence and are subject to mandatory federal sanctions as defined in 7 CFR 246.12 and shall constitute grounds for disqualification from the WIC Program for a minimum of three (3) years and up to permanent disqualification:

1. A conviction for trafficking (buying or selling WIC food benefits), conviction of selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food benefits – **Length of disqualification – Permanent**
2. One incidence of trafficking (buying or selling WIC food benefits), selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food

benefits- **Length of disqualification – Six (6) years.**

3. One occurrence of the sale of alcohol, alcoholic beverages or tobacco products in exchange for WIC benefits – **Length of disqualification – Three (3) years.**

**B. Class B Violations**

These violations require a pattern of violations be documented before a sanction can be imposed. Unless otherwise noted “pattern” is defined as two or more Class B violations that occur during the period the Retailer is under contract. For a single Class B violation the retailer may be given written notice of the violation. When written notice is given the retailer must establish a corrective action plan that includes the retailer’s attendance at a mandatory training to be completed within sixty (60) days of the notice.

4. Claiming reimbursement for the sale of any WIC item that exceeds the store’s documented inventory of that food item for a specific period of time - **Length of disqualification – 3 years.**
5. Charging WIC participants more for WIC approved foods than non-WIC customers or charging more than the posted shelf price (overcharges) - **Length of Disqualification – 3 years.**
6. Receiving, transacting, and/or redeeming WIC food benefits outside of authorized channels, including the use of an unauthorized retailer and/or an unauthorized person - **Length of disqualification – 3 years.**
7. Charging the WIC Program for WIC foods not received by the WIC participant - **Length of disqualification – 3 years.**
8. Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances , in exchange for WIC food benefits - **Length of disqualification – 3 years.**
9. Providing unauthorized food items in exchange for WIC food benefits, including charging for supplemental food provided in excess of items listed on the benefit – **Length of disqualification – 1 year.**

**C. Class C Violations**

Class C violations constitute grounds for disqualification from the WIC Program for one (1) year. At the end of the disqualification period a new application for authorization must be submitted. In all cases the Retailer’s new application will be subject to the Montana WIC Program’s retailer selection criteria in effect at that time. The WIC Program may impose a Class C violation if a mandatory sanction from the same investigation is not upheld on appeal.

10. Failure to stock any WIC approved items in three or more of the WIC approved food categories.
11. Failure to redeem at least ten at least (10) WIC benefits per month (rural) or thirty (30) WIC benefits per month (urban).

12. Failure to attend mandatory retailer training.
13. Non-payment of a claim for documented overcharges to the WIC Program.
14. Intentionally providing false information on the retailer price survey or the retailer application.

**D. Class D Violations**

A Class D sanction will not be added to a mandatory sanction within the same investigation. The WIC Program may impose a Class D sanction if a mandatory sanction from the same investigation is not upheld on appeal.

First occurrence – The retailer will receive a written warning letter and a request to train staff if training can address the violation.

Second occurrence – (within one year of first violation) Retailer must establish and conduct a corrective action plan to be completed within sixty (60) days of the notice.

Third occurrence – (within one year of the first violation) Retailer must attend mandatory training or be disqualified for twelve months.

Fourth occurrence - (within one year of first violation) Retailer will be disqualified for twelve months.

15. Contacting a WIC customer in an attempt to recover funds for WIC benefits not reimbursed or for which overcharges were requested.
16. Failure to allow monitoring of the store by WIC staff; failure to provide WIC food benefits or inventory records for review when requested.
17. Intentionally left blank
18. Accepting or requiring a signature before the actual amount of sale is entered on the WIC food benefit.
19. Failing to train all employees who handle WIC transactions and ensuring their knowledge regarding WIC Program procedures set forth in training materials and manuals provided by the Montana WIC Program.
20. Failure to submit information requested by the Montana WIC Program within the time specified, including, but not limited to, food price survey, food stocking information, sales information and corrective action plans.
21. Failure to provide a WIC customer with an itemized receipt for foods purchased with a WIC benefit.
22. Failure to request the WIC Booklet and to verify the participant's signature.

23. Purchasing infant formula from a source not on the “Infant Formula Wholesalers/Distributors/Retailers/Manufacturers” list.
24. Failure to maintain the minimum stock of WIC approved foods. Must also correct the insufficient inventory within 48 hours and provide verification to the State office within 72 hours.
25. Giving change in a WIC transaction or requiring cash to be paid in whole or in part to redeem WIC benefits.
26. Discourteous treatment of WIC participants as documented by the Montana WIC Program.
27. Misuse or unauthorized use of the WIC acronym or WIC logo.
28. Failure to maintain competitive prices on WIC approved items.

**VI. Other Disqualifications**

- A. The Montana WIC Program shall disqualify a retailer that has been disqualified from SNAP. The WIC disqualification will be for the same length of time as the SNAP disqualification, and the WIC disqualification may begin at a later date than the SNAP disqualification.
- B. The Montana WIC Program shall disqualify a retailer who has been assessed a civil money penalty for hardship in SNAP under 7 CFR 278.6. The length of disqualification will correspond to the period for which the retailer would otherwise have been disqualified in SNAP. Such disqualification may not be imposed unless the Montana WIC Program has first determined in its sole discretion that the disqualification would not result in inadequate participant access. If the Montana WIC Program determines that inadequate participant access would result, from the disqualification, then neither a disqualification nor a civil money penalty in lieu of disqualification may be imposed.

**VII. Prosecution and Fines**

A Retailer committing fraud or abuse of the WIC Program is liable to prosecution under applicable federal, state or local laws.

**A. Appeals & Notice**

1. A retailer may appeal a denial of authorization. The retailer may also appeal action taken during the course of a contract where the retailer is disqualified or any other adverse action is taken. The exception is that the retailer cannot appeal the expiration of the contract and the Montana WIC Program's participant access determination for a mandatory or Montana WIC Program violation.

**B. Civil Money Penalty in Lieu of Disqualification**

1. The Montana WIC Program shall consider civil money penalties in lieu of disqualification only as a last resort when there are no other means to provide adequate participant access.
2. Prior to disqualifying a retailer the Montana WIC Program shall determine, in

its sole discretion, and document in the retailer file, whether the disqualification would result in inadequate participant access.

3. The Montana WIC Program shall presume that there is adequate access for participants if there is at least one other authorized WIC retailer in the same geographic WIC service area as the violating retailer or in the abutting geographic WIC service area.

**C. Calculation of a Civil Money Penalty**

1. The amount of the civil money penalty shall equal the average monthly WIC redemptions for the six month period ending with the month immediately preceding the month during which the notice of sanctions dated, multiplied times ten percent (.10) and then multiplied times the number of months for which the retailer would have been disqualified. The civil money penalty cannot exceed \$11,000 for each violation and the total penalty cannot exceed \$49,000 for each investigation.

**D. Failure to pay Fine/Civil Money Penalty**

1. If a Retailer does not pay or partially pays a fine and/or CMP within the specified time frames, the Montana WIC Program will disqualify the Retailer for the length of the disqualification corresponding to the original violation.

**E. Federal regulations allow the use of vendor and participant collections for any allowable NSA cost. The funds must be used in the fiscal year that:**

1. The initial obligation was made
2. The claim arose
3. The funds are collected, or
4. After the funds are collected.

**VIII. Payment Violation**

- A. When a payment violation is discovered, that does not merit disqualification, a claim will be submitted by the Montana WIC Program to reclaim those funds.
- B. The store has 30 days to pay the claim or arrange a payment plan.
- C. An in-store training must take place for all store personnel.
- D. Failure to meet these requirements will result in disqualification from the WIC Program.